

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0123
Use Tax
For the Periods 2000, 2001, and 2002

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ISSUE

I. Use Tax—Electronic Database Subscriptions

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-5; IC 6-2.5-3-4; IC 6-2.5-5; IC 6-2.5-4-1; IC 6-2.5-1-27 ; IC 6-2.5-1-24; Sales Tax Information Bulletin #8 (May 2002).

Taxpayer protests the assessment of use tax on its electronic database subscriptions.

STATEMENT OF FACTS

Taxpayer is an accounting firm that performs tax preparation and auditing services for its clients. The Department conducted an audit of Taxpayer's business and assessed use tax on its purchases of electronic database subscriptions. Taxpayer filed a protest and a hearing was held.

I. Use Tax—Electronic Database Subscriptions

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-3-2 imposes an excise tax, commonly known as the use tax, on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. The one storing, using, or consuming is liable to pay the use tax. IC 6-2.5-3-5 gives credit for sales or use tax previously paid. IC 6-2.5-3-4 and IC 6-2.5-5 list the exemptions to use tax liability.

IC 6-2.5-4-1 defines a retail transaction as the transfer of tangible personal property for consideration. Taxpayer purchased database access subscriptions. Using an internet browser, Taxpayer goes to the website of the electronic content provider, enters its password, and is able to search and find articles, cases, statutes, regulations, and other information. After finding the information sought, Taxpayer can read the content online or can save and print the information. Taxpayer pays for access to the database of information. Sales Tax Information Bulletin #8

(May 2002) states that custom-written software programs are not subject to sales or use tax if the software is specifically designed for the purchaser. The bulletin also states that pre-written programs not specifically designed for one purchaser, developed by the seller for sale or lease on the general market are subject to tax; pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook.

The online content provider sells access to its database to the general public. The purchaser of the subscription service is granted access to transfer information from the provider's database to the purchaser's computer. The "transfer" element of IC 6-2.5-4-1 is satisfied. Because access is restricted to those who have paid for a subscription and because access is conditioned upon payment of a subscription, the "for consideration" element of IC 6-2.5-4-1 is satisfied. IC 6-2.5-1-27 defines prewritten computer software as tangible personal property. Prewritten computer software is defined in IC 6-2.5-1-24 as computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Taxpayer doesn't have the database custom written for it; the provider makes the database available to all who pay for that access. All three conditional elements of a retail transaction have been satisfied—the *transfer of tangible personal property for consideration*.

Page 4 of Sales Tax Bulletin #8, states:

F. Sale of Miscellaneous Data:

The sale of statistical reports, graphs, diagrams or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is so produced is considered to be the sale of tangible personal property unless the information from which such reports was compiled was furnished by the same person to whom the finished report is sold.

Taxpayer's subscription to access the information on the provider's database meets the situation named above. Taxpayer purchases access to view statistical reports and other information. Taxpayer does not provide the provider with the raw information to be compiled; Taxpayer pays for the privilege to access compiled information. The provider sold tangible personal property to Taxpayer and Taxpayer purchased access to the tangible personal property.

Taxpayer stated it used to purchase access to the information by means of a subscription to books. The books contained organized information. Taxpayer stated that it paid sales or use tax for these books; Taxpayer agreed the books were to have been taxed because viewable print information was transferred to Taxpayer. With improvements in technology, the books were superseded by CD-ROM disks. Taxpayer agreed that the CD-ROMs were to have been taxed because viewable print information was transferred to it. But when the next technological breakthrough appeared, the searchable, online access subscription, Taxpayer argues that this is not taxable because nothing was transferred to it. Taxpayer is mistaken. Taxpayer still receives viewable print information that is transferred to it. Despite the fact that books do not lose information when you close them because the print remains, and despite the fact that a CD-ROM does not lose the encoded information upon it when ejected from a computer, the fact that the onscreen information is lost when the browser is closed and the computer is turned off does not change the fact that information is transferred to Taxpayer. The question isn't how long a

purchaser retains what it has purchased; the question is whether something is transferred to the purchaser. In this case, articles, cases, statutes, regulations, and other information are transferred to Taxpayer when it accesses the provider's database.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

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